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Investor Money Regulations effective from 1 July 2016

by **Adrian Mulryan**

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The Investor Money Regulations (IMR) for Fund Service Providers (FSPs) came into force on 1 July 2016.

IMR applies to investor money held in collection accounts operated by FSPs. A copy of IMR can be found here. The Central Bank has also published guidance on IMR for FSPs which can be found here.

What is Investor Money?

Investor money is money to which an investor is beneficially entitled and includes money received by a FSP from an investor or on behalf of an investor, including money held by nominees. Investor money includes subscription monies received before it passes to a fund, redemption proceeds after they have been paid out of a fund and dividends which have left a fund but not yet been paid to investors.

What is a Collection Account?

A collection account is a bank account opened by a FSP in the name of the FSP or nominee of the FSP which is used to hold investor money. A collection account would commonly be known as the subscription or redemption account. If a subscription/redemption account is opened in the name of the fund, and subject to the control and oversight of the depositary of the fund, then IMR does not apply.

What is a Fund Service Provider?

IMR only applies to FSPs who hold investor money. A FSP includes administrators, depositaries, transfer and registration agents. The definition of FSP also includes entities such as alternative investment fund managers (AIFMs) and UCITS management companies.

Key Principles of IMR

There are six principles of IMR which apply to FSPs operating collection accounts which hold investor money. The principles are summarised as follows:

Segregation

The principle of segregation states that a FSP should hold investor money separate from non-investor money and, in particular, separate from the FSP’s own money. In addition, a FSP must be able to account for all money received by an investor and clearly allocate ownership to individual investors. In this regard, it is essential that FSPs maintain effective systems and record keeping to correctly identify the investor that each transaction relates to.

Designation

IMR sets out specific requirements for naming of accounts. Investor monies must be clearly identified with the words 'collection account' in the name of the account. If a FSP wants to open a collection account with a third party credit institution, the FSP must enter into an agreement with the third party credit institution prior to opening the account known as an ‘Investor Money Facilities Letter’, the terms of which are set out in IMR.

Reconciliation

This principle states that a FSP should conduct, on a daily basis, reconciliation between its internal records and the external records of any third party with whom investor money is held. This ensures that FSPs maintain records of the amounts being held in collection accounts. If reconciliation did not occur, this would increase the risk that investor money may not be properly accounted for.

Daily Calculation

This principle states that a daily calculation should be carried out to ensure that collection accounts are holding sufficient monies to cover amounts owed to investors. Any shortfall or deficit in investor money must be funded by the FSP. Conversely, any surplus or excess amounts must be removed from the FSP's collection accounts. This daily calculation principle is a fundamental principle of IMR which ensures that the amount that should be held for investors is actually held in the relevant collection accounts. It is also a practical daily control which implements the principle of segregation referred to above.

Risk management

The principle of risk management reflects international best practice in strengthening the governance and risk management arrangements pertaining to investor asset protection. This principle includes, inter alia:

- an obligation to appoint an individual as the Head of Investor Money Oversight (HIMO) with responsibility for investor money. This is a pre-approved control function (PCF) and therefore the relevant person must be approved by the Central Bank; and
- an obligation for each FSP to have an Investor Money Management Plan (IMMP) which should address the governance, oversight and reporting requirements of the FSP based on the FSP’s business model. The IMMP must be prepared within three months of 1 July 2016.

Investor Money Examination

This principle requires a firm of auditors to undertake an annual review of the FSP’s arrangements regarding compliance with IMR. This review would generally be completed in line with the year-end audit and can be completed by the auditors of the firm’s annual financial statements.

Immediate steps a firm should take

- Firms need to review their current business models to see if IMR applies and may need to amend their operating models to ensure compliance with IMR;
- A firm may need to update their Central Bank authorisation to allow them to hold investor money if their current authorisation doesn’t permit them to do so;
- An appropriate person needs to be selected and appointed to the role of HIMO; and
- Firms in scope of IMR should begin drafting their IMMP.

If you would like to discuss any of the above areas relating to compliance with the requirements of IMR, please contact any member of the Financial Services Team.

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